

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>MATTHEW GILMER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>No. 3:10-cv-0969</b>
<b>v.</b>	)	<b>JUDGE CAMPBELL</b>
	)	
<b>T.R. FRANKLIN, INC. d/b/a</b>	)	<b>MAGISTRATE JUDGE BROWN</b>
<b>TIN ROOF II or TIN ROOF 2, JASON</b>	)	<b>JURY DEMAND</b>
<b>SHEER, KYLE McPHEE, GREG</b>	)	
<b>ROMINE, LARSEN McCOLL</b>	)	
<b>PARTNERS, LP, SMW CAROTHERS,</b>	)	
<b>LLC, NDG CAROTHERS LLC,</b>	)	
<b>NDG PROPERTIES, INC., GREGORY</b>	)	
<b>HANSON, STEWART CROSS, JOSHUA</b>	)	
<b>EDWARDS, and IAN HERRIN,</b>	)	
	)	
<b>Defendants.</b>	)	

**NDG PROPERTIES, INC's CONCISE STATEMENT  
OF UNDISPUTED FACTS**

COMES NOW, Defendant NDG Properties, Inc., by and through counsel, and respectfully submits the following Concise Statement of Undisputed Facts pursuant to FRCP 56(c).

1. Prior to October 17, 2009, Defendant NDG Properties, Inc. had no reason to reasonably foresee, and did not foresee, a major violent incident occurring at its two Carothers shopping plazas including the property where the incident happened in this case (Norton Affidavit, ¶¶3-5 and Witherspoon Affidavit, ¶7)

**RESPONSE:**

2. There were no known similar incidents of violence in or around the two plazas during their approximately two to three years of operation. (Norton Affidavit, ¶¶4-5 and Witherspoon Affidavit, ¶7)

**RESPONSE:**

3. Given the very low crime rate at the property where this incident happened, NDG Properties Inc.'s security measures that were in place were reasonable under the circumstances and met the accepted standard of care owed by a property manager to its invitees to protect invitees from harm (Witherspoon Affidavit, ¶8).

**RESPONSE:**

4. Those security measures included frequently monitored exterior lighting which was adequate, trimmed shrubbery and weekly inspections or observations of the property by management (Norton Affidavit, ¶6 and Witherspoon Affidavit, ¶8).

**RESPONSE:**

5. The exercise of reasonable care did not require that NDG implement any additional or further security measures at the property where this incident happened (Witherspoon Affidavit, ¶9).

**RESPONSE:**

Respectfully submitted,

**SMITH & TOMKINS**

/s/ Warren M. Smith

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*Attorney for Defendant NDG Properties, Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of September, 2012 a copy of the forgoing Concise Statement of Undisputed Facts was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system. The parties to be served are as follows:

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